

FOU91GRD

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: CONTRACTS

NAME OF AGENCY OR CONTRACTOR: J. R. STUDEBAKER,
FOUNTAINHEAD DEVELOPMENT CORPORATION

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: ALL OF
THE REPLAT EXCEPT LOT SF 1 THROUGH 3, AND LOTS T35 THROUGH
T59, INCLUSIVE AND LOTS T76 THROUGH T86, FOUNTAINHEAD "A"
SUBDIVISION - ANNEXATION AGREEMENT, AMENDED ANNEXATION
AGREEMENT

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 1991

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

AGREEMENT

THIS AGREEMENT made and entered into this 21st day of May, 1991, by and between Fountainhead Development Corporation, a Colorado corporation ("Annexor" or "Fountainhead" or "Developer"), and the City of Grand Junction, a municipal corporation, State of Colorado, hereinafter referred to as "CITY". MS

In consideration of the mutual obligations, benefits, duties and promises the parties hereto agree as follows:

1. ANNEXOR represents and promises that it is the owner of the property described in Exhibit "Fountainhead A", attached hereto (the "Property") and that it has the authority to enter into this agreement on the terms and conditions set forth. If Annexor needs to obtain the consent or agreement of another party in order to effectuate this agreement, Annexor agrees to do so. Annexor shall provide a copy of a corporate resolution establishing that a corporate officer who signs this agreement has the full authority to bind the corporation to this agreement.

2. City shall initiate the annexation process to annex the Property into the City. The City may annex the property in conjunction with other properties in the area, so as to maximize the extent of territory annexed but only so long as Annexor may forthwith proceed with its development. The City shall proceed forthwith to annex the property and to diligently proceed to process the Final Plan in accordance with this agreement.

3. This agreement shall be recorded with the Clerk and Recorder in Mesa County, Colorado, shall run with the land, and shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto. Annexor shall forthwith notify City of assignments and the names and addresses of assignees.

4. Nothing contained in this agreement shall constitute or be interpreted as a repeal of existing codes or ordinances or as a waiver or abnegation of City's legislative, governmental, or police powers to promote and protect the health, safety, or general welfare of the municipality or its inhabitants; nor shall this Agreement prohibit the enactment or collection by City of any fee which is of uniform or general application.

5. If the annexation of the property or any portion thereof is challenged by a referendum or an initiative, all provisions of this Agreement, together with the duties and obligations of each party except the obligations contained in the paragraphs beginning with paragraph 23, dealing with the sewer, shall be suspended pending the outcome of the referendum election. If the referendum challenge to the annexation results in disconnection of the property from City, then this Annexation Agreement and all provisions contained herein shall be null and void and of no further effect, except as otherwise provided herein. If the referendum challenge fails, then Annexor and City shall continue to be bound by all the terms and provisions of this Annexation Agreement.

6. In the event that the annexation of the property or any portion thereof is voided by final action of any court (such action not being associated with a referendum or initiative action), City and Annexor shall cooperate to cure the legal defect which resulted in disconnection of the property, and upon such cure this Annexation Agreement shall be deemed to be an agreement to annex the property to City pursuant to §31-12-121 C.R.S. Annexor shall reapply for annexation when the property becomes eligible for annexation as determined by City.

7. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is by the Courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular part, term, or provision held illegal or invalid. Each party represents to the other that it is unaware of any pending actions or existing circumstances which would void this agreement or make the provisions of this agreement impossible to perform.

8. Except as otherwise stated herein, no right or remedy of disconnection of the described property from the City shall accrue from this agreement, other than that provided by C.R.S. 31-12-119, as amended. In the event the Property or any portion thereof is disconnected at Annexor's request, City shall have no obligation to serve the disconnected property and this agreement shall be void and of no further force and effect as to such property.

9. City and Annexor agree to jointly pursue all reasonable methods to continue such water and/or sewer service which has been provided in the event of an initiative or referendum election which voids the annexation of the property, including but not limited to extra-territorial water and sewer contracts. Such agreement to cooperate shall not constitute a legal obligation on part of City to provide or continue service.

10. The City shall propose for adoption the "Replat of Fountainhead Subdivision except Lot 1 Block Three" final plat and plan, as recorded in the Mesa County Clerk and Recorder's Office in Plat Book 12 pages 177 through 182, as modified by this agreement [hereinafter referred to as the "Final Plan"], as the zoning and subdivision plat and plan for the project. The parties hereto agree that if the City does not adopt the Final Plan, such failure to adopt shall not invalidate the remainder of this agreement; if the City does not adopt the Final Plan as the applicable zoning and subdivision in the City, the other provisions of this agreement, such as those dealing with the provision of sewer service, shall survive and still be enforceable. This agreement shall apply to all phases of the Final Plan.

11. The Final Plan is modified and amended as follows in addition to the other amendments necessary to effectuate the provisions of this agreement:

a. the road standards which shall apply shall be as shown on the attached Exhibit "Development Plans for the Cove @ Fountainhead" (hereinafter "D Plans") Sheet 2 of 22. "Fountainhead Road Standards";

b. landscaping of the areas adjacent to rights of way associated with the property, including G and 25 roads, shall be in accordance with the attached exhibits labelled "Landscaping/Fountainhead". The attached standards shall be implemented throughout the project.

c. throughout the project, sidewalks shall be constructed according to the City specification as promulgated by the City Engineer as shown on sheet 15 of 22 of the D Plans, prepared by Banner Associates, Inc.; the location of the sidewalks shall be as shown on the "Final Plan";

d. a sanitary sewer and storm drainage conveyance system shall be constructed according to City specifications in locations and sizes as shown on the D Plans;

e. water distribution system(s) shall conform to adopted City standards, including fire code standards and the standards contained in Ordinances 2497 and 2508, as shown on the D Plans;

f. at the time that any further development occurs (meaning any sale of any lot after Filing 1, and as part of a required improvements agreement/guarantee developer shall pay to the City that amount of money equal to the City Engineers reasonable estimate of the costs to construct one half of the abutting portions of: G Road to the standards then in effect for a minor arterial; 25 Road to the standards then in effect for a collector. The required improvements for 25 Road shall occur at the time that the 70th unit is developed or approval is given for its development, whichever occurs first.

g. No more than two access points may be provided from the Property to 25 road. These access points must not be closer than 300 feet from each other. The southernmost access must be at least 500 feet north of G road. Each access point must provide a minimum of 350 feet of horizontal and vertical sight distance to 25 road.

h. Fountainhead Boulevard, as shown on the Final Plan, shall be constructed in phases as shown on the attached Exhibit "Fountainhead Blvd. Phasing Plan". In the first phase of eleven lots, Fountainhead Boulevard shall be constructed north approximately 213 feet in length. Fountainhead Boulevard shall be extended further north in conjunction with the third phase of filing one, consisting of eleven lots to the northernmost limits of filing 1. Interim cul-de-sacs shall be constructed in order to provide adequate traffic flow until such time as Fountainhead Boulevard is extended to the north. The initial phasing of Fountainhead Boulevard, as described, is depicted on "Fountainhead Blvd. Phasing Plan," Sheet 5 of 22 of the D Plans.

12. City agrees that it shall refund or establish a credit against otherwise payable city sales and use taxation which would apply to the sale or use of those items required to be purchased or used in order to construct the systems and infrastructure identified in the Improvements Agreement attached hereto and in future Improvements Agreements associated with the Property and incorporated herein by this reference, to wit: pipe, street lights, manholes, sewer connections and appurtenances, asphalt, road base, traffic signs and devices, and concrete and related miscellaneous items.

The previous paragraph shall not exempt any person from the filing requirements established by Chapter 24 of the City Code nor from any other requirement of said Chapter of the City Code; this provision shall be construed to entitle the developer or its contractors to be entitled to a refund of the sales and use tax identified in this paragraph which would otherwise be retained by the City.

13. The improvements guarantee required by the City Code to ensure that the improvements described in the improvements agreement are constructed (to city standards) may be in the form of an agreement: (I) between a bank doing business in Mesa County and the City or as described in (II), below. The agreement between a bank and the City (I) shall provide, among other things, for the bank to guarantee and warrant to the City that it shall:

a. have available money equal to the estimated costs of the required improvements, in an amount equal to the amount agreed upon in the Improvements Agreement;

b. only pay such amounts to contractors who have constructed required Improvements;

c. only pay such amounts after the bank has received the written approval of the City Engineer, or his designee; the City Engineer shall inspect within three (3) days of request;

d. in the event the bank disburses without the City Engineer having approved such disbursement, the Bank shall pay, in addition to all other sums it would otherwise be obligated to pay, to the City the amount of the wrongful disbursement if the City Engineer determines that the work is not acceptable, based on the approved plans and specifications. The City shall use such money to cause the work to be constructed in accordance with the approved plans and specifications;

The alternative to (I), above is identified as (II) and shall contain the following provisions:

The Finance Department of the City will act as disbursing agent and will account for disbursements to Developer contractors as required improvements are completed and accepted.

Two separate improvement agreements will be entered into: one for the sewer system to connect to the existing system ("Sewer Improvements") and one for all other required improvements ("On-Site Improvements"). The City will accept a cash deposit from the Developer equal to the City approved estimate of the required improvements, for purposes of securing and guaranteeing the construction of the required sewer and on-site improvements in the development plan. Such deposit(s), currently estimated at approximately \$200,000 for Sewer and \$150,000 for On-Site, shall be given to the City's Finance Department, comingled with other funds of the City and specifically invested in the short term market. Interest income shall be allocated to the Developer's escrow account monthly, in the same manner as other short-term investments of the City.

Such interest income shall be used to reimburse the General Fund of the City for accounting and transaction costs incurred in making payments to the appropriate contractors. For purposes of this agreement, the City's costs shall be one hundred dollars (\$100.00) for each check disbursement or other transaction which is made. In any event the amount retained by the City for its transaction costs shall not be less than one percent (1%) of the amount deposited. After all required improvements have been made and accepted by the City, any surplus funds remaining in the account (in excess of the one percent minimum or the calculated transaction costs) shall be returned to the developer within thirty (30) days of said acceptance date. Any transaction costs which are not covered by the amount of the deposit plus accrued interest shall be paid to the City by Developer in like manner within thirty (30) days of completion of the improvements. No guarantee as to the level of interest income or rate of return on the funds so deposited is either implied or made in this agreement, the City agrees only to keep the funds invested as with other City funds.

e. in any event, Developer promises to construct the required improvements to the satisfaction of the City Engineer, who shall act reasonably, in accordance with the approved plans and specifications.

14. Developer agrees that it shall construct the utilities as set forth in the utilities composites, Sheet U-1 of the Paragon, November 1982 plans, as modified by the D Plans.

15. This agreement constitutes approval of Filing 1 of the project, consisting of 35 lots on approximately 8.499 acres. With regard to the balance of the property, Developer shall enter into additional improvements agreements, in accordance with applicable law, with the City with respect to any other portion of the project before Developer can sell, exchange, convey, transfer, or offer to sell, exchange, convey, or transfer the property or any portion of the property, except the entire property to one entity or person. Notwithstanding the foregoing, Developer will not be in default of this provision if such a sale is to a sophisticated investor who has been fully informed, by the Developer, of the applicable rules of the City and the terms of this agreement.

For the purposes of this agreement, an affidavit from a buyer that the buyer is aware of the status of the project and the risks involved in buying property that does not have completed infrastructure (e.g., water, sewer, electric, roads, gas) is sufficient.

16. The specifications for the construction of the utilities that are acceptable to the City may change over time. Developer may construct to the standards in effect as of the date of this agreement for those future filings of the project for which an improvement agreement is executed on or before December 31, 1992. For filings for which an improvements agreement is not fully signed on or before December 31, 1992, developer shall be subject to any future standards which are uniform and are applied system-wide. The horizontal alignments for all roads in all filings of the Property are approved and the horizontal and vertical alignments for all utilities in all filings of the Property are approved, in accordance with the approved Development Plans and the several provisions of this agreement.

17. Areas on the existing plat of the property between lots and designated as "access easement" and "open space", being a fifty foot wide area made up of two ten foot easements for utilities and a 30 foot area for access, shall be modified to show one fifty foot wide right-of-way to be used for streets and utilities. Without the need for a public hearing but as an administrative process, the developer shall cause the final plat(s) of the property to be amended by the preparation, and submittal to the City for its approval, of a new final plat at the same time as the Developer proposes additional phases of the property to be developed and along with a proposed additional Improvements Agreement. The administrative approval, not subject to public hearing, shall apply to the several plats associated with the property.

18. (a) With respect to Filing 1, an open space fee of \$225 per dwelling unit shall be payable as follows: (i) \$50 per dwelling unit in Phase 1, Filing 1 to be paid to the City by the Developer at the time that any subsequent plats or improvements agreement are approved or any further development of the Property occurs, after Filing 1, whichever is first; (ii) \$175 per dwelling unit to be paid by the then owner of a lot at the time of issuance of a certificate of occupancy for a structure on such lot.

(b) For all subsequent development (after the first 35 units), the \$225 per unit open space fee shall be paid as follows: (i) \$50 per dwelling unit to be paid to the City by the developer at the time of the earlier of an improvements agreement, an amended or final plat or issuance of a building permit; (ii) \$175 per dwelling unit to be paid by the then owner of a lot at the time of issuance of a building permit for a structure on such lot.

19. City services provided on a basis equal to other areas of the City shall begin at the time the property is annexed.

20. Developer is solely responsible to acquire such right-of-way and/or easements as are required to construct any sewer lines or facilities necessary to provide sanitary sewer to the property.

21. All prior agreements, whether written or oral, between the City and Fountainhead Development Corporation and/or J.R. Studebaker, including agreements dated June 9, 1987 and April 30, 1984 are hereby terminated and held for naught. No further agreements, nor modification of this agreement, shall be made nor shall any be effective, unless they refer to this agreement and are in writing signed by both parties. The City may only be bound by the signature of the City Manager or the Mayor.

22. Annexor shall, contemporaneously herewith, execute a power of attorney for the purpose of annexing the Property to the City. A copy of the petition and the power of attorney are attached hereto and labelled Exhibit "Fountainhead Petition and Fountainhead Power of Attorney", respectively. Fountainhead agrees to take such other steps and to execute such other documents as may be required by the City in order to accomplish the annexation to the City of the Fountainhead subdivision. Fountainhead agrees to annex other lands which it may own or control. Specifically if Fountainhead or J.R. Studebaker, or any entity controlled by either owns an interest in any of the lots originally platted as Fountainhead or as The Cove at Fountainhead in Mesa County, the Power of Attorney is intended to apply to such lands. The City is hereby authorized to sign on behalf of Fountainhead or J.R. Studebaker or the successor or assignee of either, a petition(s) to annex such other lands if any such lands are located adjacent to or within one mile of the Property. This promise and the power of attorney shall survive the construction of the sewer collection system contemplated herein. In addition to the power of attorney, Fountainhead agrees to execute all other documents reasonably required to annex the Property to the City within thirty days of written request thereof by the City.

23. Developer agrees to construct the sewer system necessary to serve its development and agrees to connect such sewer system with the City's sewage collection and disposal facilities in a manner consistent with the prior approvals of the City. Such sewer system shall be constructed in accordance with the engineering standards applicable pursuant to the letter dated April 16, 1991 from the City's Utility Engineer. (Exhibit "LETTER".)

24. Forthwith following completion of the sewer system, as determined by the City Engineer, the developer shall tender title to the City for transfer of ownership (with no additional consideration to be paid to the developer) along with "as built" of the sewer system to the City; the City agrees to accept such transfer and title to the sewer system if the sewer system has been constructed in accordance with the standards set by the City Engineer, and if there are no indications that the sewer system is other than in excellent condition. When the City accepts the sewer system, the City shall thereafter own, operate and maintain it. The developer shall cause to be delivered to the City a bond

or other security acceptable to the City which shall require the contractor who built the sewer system to warrant and repair the sewer system for one year following a transfer of title to the City.

25. The developer shall obtain any required governmental approvals, including any approvals from the City, at no cost to the City, for the construction, repair and maintenance of the system until the City accepts the system. The City shall impose no additional approvals after execution hereof, except as otherwise required by law.

26. The transfer to, and acceptance by, the City of the system shall only be for those portions of the system which are not service lines and not structures appurtenant to service lines; service lines and structures appurtenant to service lines, in accordance with City policy and practice, shall be perpetually maintained by the developer or his successors or assigns (generally the individual lot owner). City agrees to permit the developer the non-exclusive use of any rights-of-way or easements obtained in the name of the City for the purposes of the construction of the developer's system, but only so long as developer complies with the reasonable requirements of the City Engineer in such regard. Developer agrees that, if developer uses or obtains the benefit of such rights-of-way or easements, developer shall hold harmless and indemnify the City, its officers, and employees from any and all claims arising out of such use and/or the construction of the system, except causes of action or claims resulting from the sole misconduct of the City. The developer's agreement to hold harmless and indemnify the City, its officers and employees includes developer's obligation to indemnify the City, its officers and employees, with respect to reasonable attorneys' fees incurred by the City, or the value thereof, and with respect to experts' fees and costs, and the developer shall indemnify and hold harmless the City, its employees and officers from claims by the developer, any purchaser, successor or assign of the developer, and any third party, whether or not any such claim or cause of action is frivolous, groundless or unsubstantial.

27. The developer understands that this agreement does not change or modify the developer, its successors', or assigns', obligation to pay costs and/fees normally charged by the City such as plant investment fees, inspection fees, monthly sewer service charges, or any other charges or fees which the City is now charging, or may be in the future on a uniform system-wide basis entitled to charge the developer or any user or person receiving the benefit of the sewerage system.

28. Developer is required to construct an 8" sanitary sewer line along G Road from the existing sewer line at 24 and G Roads. When the City accepts the system and merchantable title is transferred to the City, the developer shall be entitled to be reimbursed by those persons specially benefitted by the system for those reasonable and necessary costs incurred by the developer in constructing the system, as approved by the City Engineer, as follows:

a. reimbursable costs are those costs actually paid, which may include reasonable engineering and legal fees, costs of right-of-way and/or easement acquisition, costs of "as built" plans, costs of any warranty bonds or other security instruments required by the City, by the developer and actually required to design, construct, and inspect the system, but in no event shall reimbursable costs exceed 85 percent of the total costs approved by the City Engineer, excluding any portion of the cost paid by the City to oversize the sewer line (which is estimated to cost not more than \$10,000 for the costs of (a) larger pipe; (b) 2" of bedding; and (c) 2" of excavation).

b. For a period of fifteen years following acceptance by the City of the sewer system, as evidenced by a writing from the City, or until the developer is reimbursed for those costs set forth in (a.) above, whichever first occurs, the City agrees that it will not authorize any other person to use the sewer system unless each future user first pays, in addition to all other applicable charges and fees, a sum calculated as follows:

BC= cost to developer of constructing the sewer line sufficient to serve the development.

RC=reimbursable cost ($RC=BC \times 0.85$)

DU=total number of residential units in development. For this agreement DU is 405.

BU=total number of equivalent residential units in basin. For this agreement, BU is 576.

Payback per unit in the base year (1991) = $[RC/149] + B$.

Payback per unit in subsequent years = base year payback + i times payback times number of years after the base year plus B.

i = simple interest equal to the annual increase or decrease (measured from the Index base of January 1, 1991) in the Denver/Boulder Consumer Price Index for All Urban Consumers, (up to a maximum of 15 years) following the date of acceptance of the system by the City; the foregoing variation in interest shall be subject to a minimum interest rate of four percent and a maximum of ten percent, even if the CPI index is less than 4% or greater than 10%.

B = 10% of PAYBACK PER UNIT; (this represents the amount to be paid to the City for administration of this agreement and will be paid by each future user to the City). Once the payback per unit is established by the above formula, each future user shall pay such fixed amount.

In the event the developer does not substantially complete the construction of the system within two years of the execution of this agreement, the portions of this agreement relating to the sewer system shall terminate and shall be of no further force or effect, except that the provisions of paragraph 26 concerning holding harmless may apply if the developer has begun construction and except that any power of attorney or petition to annexation shall not be effected by the failure of the construction to be timely completed. A reasonable extension of one year shall be granted if developer is otherwise in compliance with all terms of this agreement and developer is proceeding diligently to complete the sewer system.

The City may, in addition to amounts reimbursed to the developer, collect from each future user a portion of the amounts paid by the City to oversize the line.

29. Developer may assign his rights pursuant to this agreement, but only so long as notice of such assignment, with the address of the assignee, is made by certified mail to the City, in care of the City Finance Director. If the City makes any collections pursuant to this agreement, the City shall be obligated only to mail a check to the developer, or his properly designated assignee, to the last known address of the developer or assignee; the City has no duty and is not obligated to locate a proper payee. In the event that any claim is made or cause of action is filed by any person alleging that this agreement is unconstitutional, unenforceable, or otherwise contrary to law, or that the interest payable to the developer hereunder from such future user is excessive or is not enforceable in a court of law, the developer agrees that he shall be bound by any settlement(s) of such claim(s) or causes of action, whether or not developer or its assigns is a party thereto, and that it waives and releases the City, its officers and employees, from any claims or causes of action developer may have due to the failure of the City to abide by or enforce this agreement.

30. To be entitled to be reimbursed, developer shall present to the City Finance Director adequate documentation so that the City Engineer may determine all actual costs of construction. In the event that the City fails to collect the fee from any future user, the developer has the right to sue such future user and the City agrees to cooperate, without expense to the City, in such collection efforts of the developer. Developer agrees, however, that in such event developer hereby waives any right(s) developer may have to any damages or claim for damages or money due from or against the City, its officers or agents.

31. In the event that the developer is in default with regard to any other obligation of the developer as it relates to this agreement and the several rights and duties of the parties reasonably related thereto, with respect to such defaults up to the time of acceptance of the sewer system by the City, the City shall have the right to set off any reimbursements that may be due hereunder to satisfy in whole or in part any such default.

32. In the event that the developer or it assigns has received reimbursement directly from any owner or developer of any property which may be subject to the fees in accordance with the terms of this agreement, the developer shall immediately upon receipt thereof, notify the City Finance Director in writing of the amount collected, the name and address of the person from whom collection was made, and the property to which the collection is applicable.

33. This agreement shall bind the signatory parties and their respective heirs, successors and assigns.

34. At the time of acceptance of the system by the City, developer shall convey to the City, at no cost to the City, by general warranty deed, marketable title, subject to no liens or encumbrances, to such rights of way, or as provided herein, easements, as may be required by the City in order that the City may own, operate, and maintain the system and the wastewater transmission and delivery system.

35. Until fifteen years after acceptance of the sewer system occurs, if ever it occurs, upon written request from the developer, which request shall not occur more than once every twelve (12) months, the City shall provide an accounting during the term of this agreement. Said accounting shall be provided within thirty (30) days of request and shall contain a listing of each Fee collected during the preceding twelve months, the name and address of the remitter of said Fee, the property address for which the Fee was paid, a current balance of the RC, and total interest credited to the developer's account. The City shall pay all fees collected within the preceding twelve months at the time of each accounting, less amounts paid to or retained by the City for costs of administration.

36. Upon non-performance by the City pursuant to this Agreement, the developer shall give notice of default to the City Manager specifying the action giving cause to said default. The City shall have 30 days from its receipt of said notice to correct the alleged default. Upon the correction of said default within the 30 days period the agreement shall be restored and all terms and conditions will be in full force and effect.

37. Written notice pursuant to this agreement shall be given by certified mail to the address listed below or to such other address as a party may hereafter designate by certified mail.

38. For the ad valorem tax year following the year that annexation is complete, the Grand Junction Rural Fire District mill levy will be replaced by the mill levy of the City of Grand Junction. The Rural Fire District mill levy for 1990 is 7.599; the mill levy for the City of Grand Junction is 8.967 for the same year.

39. The curb on Fountainhead Boulevard may be a "roll-over" curb consistent with the attached concept plan so long as the other applicable criteria are satisfied. Up to five lots on the west side of Fountainhead Boulevard may share one primary access onto Fountainhead Boulevard.

40. With respect to Filing 1, Developer may have up to four "model" dwelling units on the property for display purposes. A building permit shall be issued for each unit so long as all applicable rules and regulations are applied with, except:

a. The water supply for the unit may consist of the existing 3" line until such time as the permanent developer-installed line is completed.

b. Developer shall pay the plant investment fee of \$750 at the time of issuance of building permits but shall not be required to have sewer service actually installed until the developer-installed line on G Road is completed.

c. Until the permanent sewer service is available, developer shall provide "porta-pottys" or other acceptable temporary device(s) or structure(s) on site, in accordance with local health department regulations. Developer shall not be entitled to occupy any of the units except as a sales office and/or display model until the units have been finally inspected and approved by the building department.

41. Once G Road and 25 Road is in the City, City agrees to vacate, at developer's request, the north ten feet of that portion of G Road which abuts the south portion of the property and the west three feet of 25 Road which abuts the east portion of the property.

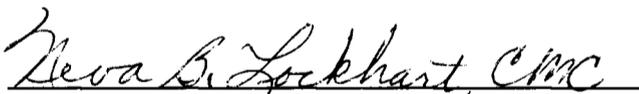
42. The soils report prepared by G.T.L. Geo Testing Laboratories, Inc, dated January 7, 1980 signed by Andrew Porter, is approved and satisfies the pavement design report minimum requirements identified in subparagraphs A. through D, according to the attached Exhibit "Pavement Structure Design Report" requirements.

43. Subject to the terms of a revocable permit to be issued, Developer may landscape adjacent portions of G & 25 Roads. Developer shall submit a landscaping plan for City approval prior to construction.

44. As shown on Sheet 4 of 22 of the D Plans, Developer shall install street lights. Until such time as the development is served by Public Service Co., or until such time as the City has a franchise with Grand Valley Rural Power with substantially similar terms as that the City has granted to Public Service Co. dealing with street lights, Developer shall pay any monthly charges associated with the supplying of power to the required street lights.

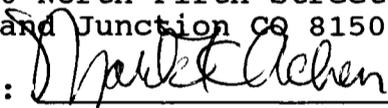
45. Within sixty days following substantial completion of construction of the sewer and water systems within the project, Developer shall supply the City with "as built" drawings indicating the actual location (s) of the sewer and water and other taps and connections to the several lots.

Attest:



Neva B. Lockhart
City Clerk

City of Grand Junction
250 North Fifth Street
Grand Junction CO 81501

By: 

Mark K. Achen
City Manager

Attest:

Sonia S. Hannigan
Secretary

Fountainhead Development Corp.

By: *J.R. Studebaker*
J.R. Studebaker
President
3154 Lakeside Drive, #103
Grand Junction CO 81506

J.R. Studebaker
J.R. Studebaker a/k/a
Jerald R. Studebaker
13428 East Chicago Street,
Chandler AZ 85224

Exhibit "FOUNTAINHEAD A"

All of the replat Fountainhead Subdivision, according to the Plat filed July 6, 1983 in Plat Book 12 at pages 177 through 182,

Except Lot SF 1-3, Fountainhead Subdivision

And Except Lots T-35 through T-59, inclusive and Lots T-76 through T-86, inclusive, Block 2, Fountainhead Subdivision

MESA COUNTY, COLORADO

YOUNGE & HOCKENSMITH
PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

200 GRAND AVENUE, SUITE 500

P. O. BOX 1768

GRAND JUNCTION, COLORADO 81502-1768

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EARL G. RHODES
YEULIN V. WILLETT

BRENT A. CARLSON *
DOUGLAS E. BRIGGS
PHILLIP A. CHAMBERS

* ALSO ADMITTED IN CALIFORNIA

August 12, 1994

HAND DELIVERED

Ms. Stephanie Nye
City Clerk
City of Grand Junction
250 North Fifth Street
Grand Junction, CO 81501

Re: Fountainhead Development Corporation v. City of Grand Junction
District Court, Mesa County
Case No. 93 CV 385

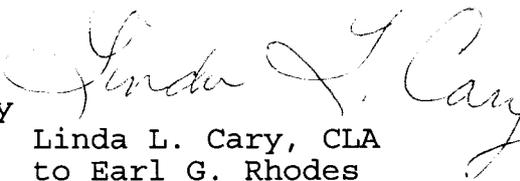
Dear Ms. Nye:

Returned herewith is your file regarding Fountainhead Development. Thank you for allowing us to borrow the file for copying.

I appreciate your courtesy and that of your staff in this matter.

Very truly yours,

YOUNGE & HOCKENSMITH
Professional Corporation

By 
Linda L. Cary, CLA
to Earl G. Rhodes

lc
Enc.

G:\DATA91\91340018\NYE1.LTR

AGREEMENT

Agreement made between the Fountainhead Development Corporation ("Developer" or "Fountainhead") and the City of Grand Junction made this 30th day of September, 1991.

1. This agreement is an amendment of the agreement made May 21, 1991, between the same parties.

2. In the May 21, 1991 agreement, the City agreed to vacate the North 10' of that portion of the G Road right-of-way which abutted Developer's development. As it turns out, the City requires all of such existing right-of-way in order that G Road may be wide enough to meet the needs of the public. Therefore, that portion of the agreement of May 21, 1991 ("The Agreement") is modified to delete the requirement to vacate the referenced 10'.

3. Paragraph #40 of the agreement provided that the Developer could build four (4) model units on the property for display purposes, subject to the several provisions of the agreement, including the posting of security. The agreement is hereby modified to allow for one (1) unit only to be used for display purposes, which may be constructed in the first phase of Filing #1 without the Developer posting security as is otherwise provided in the agreement. Such unit shall not be sold, transferred or conveyed, nor shall a certificate of occupancy be issued, until such time as the City accepts a guarantee from the Developer that the required adequate infrastructure will be in place, or until the required infrastructure has been constructed and accepted by the City.

The three (3) additional "model" units may also be constructed in accordance with paragraph #40 of the agreement. Security satisfactory to the City shall have been delivered to the City before a building permit for any of these units shall issue. The City will continue to abide by the provisions of paragraph #40 in order that one (1) model unit shall be attached to a vault system or other system acceptable to the Mesa County Health Department. Attached is a copy of Exhibit "A" (the original of which shall be retained by the City) which developer has delivered in order to create one lot, on which the "model" unit may be constructed, which complies with County Health Department requirements. The City shall record such documents in the event Developer has not constructed the sewer and other improvements as set forth in the Improvements Agreement. Fountainhead agrees to provide such conveyances, plats, deeds or other documentation and security sufficient to provide adequate land for such an approved system, as well as for ingress and egress, water, sewer and other normal City requirements. Nothing in this paragraph authorizes continuation of the above condition but does allow for the possible occupancy and sale of the unit once the necessary required infrastructure to serve this structure is constructed by Developer and accepted by the City.

4. It has been further agreed between the Developer and the City of Grand Junction that the "City cost" of the proposed sewer line shall be \$10,000.00 and that this amount can be released directly to Fountainhead or its assigns upon request. Such release of these monies shall not be unreasonably withheld.

5. For a period of one (1) year after the acceptance by the City of the proposed sewer line, the City agrees to release any monies that would normally be released to Fountainhead, or its assigns (recapture agreement). The City will release any monies due within 15 days of a written request given to the City by Fountainhead or its assigns. Such request shall be effective when sent to the Collections Supervisor and to the City Comptroller, 250 North 5th Street, Grand Junction, CO 81501. All other conditions of paragraph #35 will still apply and remain in effect.

6. The City agrees that the Developer may develop less than 11 lots in first filing and in such event, the developer agrees that the required improvements and infrastructure deemed necessary to serve the revised phasing will have been constructed or adequate security will have been delivered.

a. In the event of unavoidable delay due to weather, or other delay in the completion of interior roads (such as the final overlayment of asphalt), concrete, etc., the City will allow a Certificate of Occupancy to be issued for structures lawfully built, provided adequate monies or other satisfactory security is delivered to the City to guarantee construction of the improvements and infrastructure required for a Certificate of Occupancy for such unit.

7. On or before January 1, 1992, the City will provide its estimate of costs and other requirements for the 1/2 road improvement that shall occur along the North right-of-way of G Road, from the intersection of 25 and G Road to the intersection of Fountainhead Boulevard and G Road, and shall also provide the same for the West side right-of-way from 25 and G Road along the West side of 25 road to the Northeast property corner.

a. Developer's engineer shall submit sufficient test results to establish the Standard Proctor Densities of the soils encountered in the sewer trenches. Developer shall compact to the following percentage of one (1) Standard Proctor Density: 95% for areas within a public right-of-way; 90% for areas in easements which will not be subject to vehicular traffic.

8. It is not a condition of the sewer line approval that the Grand Valley Rural Power line from the existing right-of-way on the South of G Road west of 24-1/2 Road to the 24 Road intersection, be moved. Developer, or its contractors, shall comply with applicable law and safety standards.

9. This agreement constitutes the approval of the Community Development Department necessary for the Developer to apply for and to obtain a building permit for the one (1) unit consistent with this agreement.

10. The City will file, and record, a notice that the improvements agreement filed in Book #1838 on Page #571, recorded May 22, 1991, is not yet effective and that the time for compliance of the improvements agreement has not yet started.

CITY OF GRAND JUNCTION

FOUNTAINHEAD DEVELOPMENT CORPORATION

BY: Mark Lechen
City Manager

BY: JR Studebaker
President/CEO

ATTEST:

Sara S. Hannigan
Secretary

EXHIBIT "LETTER"

April 16, 1991

Mr. James E. Langford
Banner Associates, Inc.
2777 Crossroads Blvd.
Grand Junction, CO 81506

Re: Fountainhead Subdivision - Outfall Sewer

Dear Mr. Langford:

I have reviewed the plans for the Fountainhead Subdivision outfall sewer line submitted April 11, 1991. They are acceptable for construction as shown contingent on the following items:

1. Plans to be sealed by a Professional Engineer registered in the State of Colorado.
2. Copies of all permanent easements that relate to the outfall line to be submitted to the City for review prior to final approval.
3. An improvements agreement for the outfall sewer line to be submitted to the City for review prior to final approval.

All other review comments as they pertain to the outfall sewer line have been addressed to the satisfaction of the City Public Works Department.

Please contact our office if you have any questions on the above.

Sincerely,
FOR THE CITY OF GRAND JUNCTION

Bill Cheney
Utility Engineer

cc: Dan Wilson, City Attorney
Jim Shanks, Public Works Director
Greg Trainor, Utility Manager

"PAVEMENT STRUCTURE DESIGN REPORT"

- D. Access permits shall not be issued that include any design elements or allow any turning movements, where the stopping sight distances are not adequate to allow the safe movement of any motorist using the access approach.

1.7 PAVEMENT STRUCTURE DESIGN

1.7.1 General Policy

The policy and procedure for the design of pavement structure sections shall be based on the most current edition of the Colorado Division of Highways Roadway Design Manual - Section 600.

1.7.2 Pavement Structure Design Report

A pavement design report shall be prepared and stamped by a Colorado registered professional engineer, and shall be considered a requirement of road plan approval.

The pavement design report shall include all of the following minimum information:

- A. Soil logs along the proposed roadway alignment at a maximum of 500 foot intervals.
- B. Each log shall have a soil profile of at least four feet below proposed subgrade elevation.
- C. Representative samples for pavement design from each log shall be within two feet below proposed subgrade elevation.
- D. Each representative sample shall be classified according to the AASHTO Unified Soil Classification Table, along with an Atterberg Limits Test and sieve analysis.
- F. Proposed average daily traffic volumes (ADT) for each road shall be based on 100% of full development including an adjustment for construction traffic. Traffic analysis for the purpose of pavement design shall be as given in Section 1.2.3;
- G. Recommended structural sections, based on the design considerations, proposed typical sections, and sections of roadway which may require additional stabilization or treatment;
- H. Design life shall be 20 years.

PAY ITEM SCHEDULE: (PHASE I)

ITEM	DESCRIPTION	UNITS	TOTAL QTY.	UNIT PRICE	AMOUNT
(Off-site) WATERLINE ITEMS:					
1	12-inch CI-150 PVC waterline,	LF	20.00	\$22.00	\$440.00
2	10-inch CI-150 PVC waterline,	LF	650.00	\$21.00	\$13,650.00
3	8-inch CI-150 PVC waterline,	LF	30.00	\$14.00	\$420.00
4	8"x8" wet tap with 8-inch tapping valve	LS	1.00	\$2,200.00	\$2,200.00
5	90 deg. bend w/thrust block	EA	1.00	\$300.00	\$300.00
6	12"x10" Cross w/thrust block,	EA	1.00	\$480.00	\$480.00
7	10"x8" Reducer,	EA	1.00	\$210.00	\$210.00
8	12-inch Gate Valve & Box	EA	2.00	\$700.00	\$1,400.00
9	10-inch Gate Valve & Box	EA	1.00	\$650.00	\$650.00
Sub-total Off-Site Water line:					\$19,750.00

NEVA

THIS IS ONE LAST
ATTACHMENT FOR YOUR
PERMANENT FILE, TO BE
STAPLED TO THE "AGREEMENT",
LAST PAGE IS FINE.
STAX DAN W

ITEM	DESCRIPTION	UNITS	TOTAL QTY.	UNIT PRICE	AMOUNT
(On-site) WATERLINE ITEMS:					
10	8-inch CI-150 PVC waterline,	LF	735.00	\$12.00	\$8,820.00
11	10"x8"x10" tee w/thrust block,	EA	1.00	\$300.00	\$300.00
12	8" tee w/thrust block,	EA	3.00	\$280.00	\$840.00
13	8-inch Gate Valve & Box	EA	4.00	\$360.00	\$1,440.00
14	Fire hydrant assembly, including fittings	EA	2.00	\$1,700.00	\$3,400.00
15	3/4" water services w/curb stop	EA	11.00	\$240.00	\$2,640.00
Sub-total On-Site Water line:					\$17,440.00
(On-site) SANITARY SEWER ITEMS:					
16	8-inch PVC sanitary sewer main, all depth, complete in place	LF	738.00	\$9.80	\$7,232.40
17	Sanitary sewer manholes,	EA	3.00	\$660.00	\$1,980.00
18	4" sewer services, per detail	EA	11.00	\$280.00	\$3,080.00
Sub-total On-Site Sanitary Sewer:					\$12,292.40
DRAINAGE ITEMS:					
19	24-inch Reinforced concrete pipe,	LF	232.00	\$29.80	\$6,913.60
20	18-inch Reinforced concrete pipe,	LF	30.00	\$25.10	\$753.00
21	Double Inlet,	EA	2.00	\$1,160.00	\$2,320.00
22	Storm Sewer Manhole,	EA	2.00	\$400.00	\$800.00
23	Asphalt Roadway cut & patch including base, tack & asphalt	SY	36.00	\$40.00	\$1,440.00
Sub-total Drainage:					\$12,226.60
(On-site) PAVING AND GRADING CONSTRUCTION ITEMS:					
24	Roadway embankment (pit run)	CY	2,200.00	\$5.50	\$12,100.00

ITEM	DESCRIPTION	UNITS	TOTAL QTY.	UNIT PRICE	AMOUNT
25	3-inch Hot Bituminous Pavement	SY	2,394.00	\$6.75 ✓	\$16,159.50
26	6-inches CL-6 flexible base,	SY	1,696.00	\$4.90 3.37	\$8,310.40
27	8-inches CL-6 flexible base,	SY	1,113.00	\$6.50 4.05	\$7,234.50
28	2-foot wide curb and gutter,	LF	1,600.00	\$9.00 ✓	\$14,400.00
29	Radii & Pan,	EA	4.00	\$900.00 ✓	\$3,600.00
30	5-foot wide drainage pan,	LF	56.00	\$13.50 ✓	\$756.00
31	4-foot wide sidewalk,	LF	120.00	\$12.00 ✓	\$1,440.00
32	Handicap Ramps,	EA	4.00	\$450.00 ✓	\$1,800.00
Sub-total Paving and Grading:					\$65,800.40
SUPPLEMENTAL ITEMS: (if requested by engineer)					
1	Subgrade Excavation	CY	50.00	\$8.50	\$425.00
2	Rock Excavation	CY	50.00	\$50.00	\$2,500.00
Sub-total Supplemental Items:					\$2,925.00
TOTAL:					\$130,434.40
Additional Public Services:					
1	Power	LS	1.00	\$16,000.00	\$16,000.00
2	Gas	LS	1.00	\$6,500.00	\$6,500.00
3	Telephone	LS	1.00	\$9,500.00	\$9,500.00
4	Cable Television	LS	1.00	\$0.00	\$0.00
Sub-total Additional Public Services:					\$32,000.00
GRAND TOTAL:					\$162,434.40

a Items 1 thru 23 are based on firm bid numbers submitted by Lyle States Construction.

- b** Items 24 thru 32 have been estimated by the Engineer using historic cost plus an inflation factor.
- c** The Supplemental Items are items for which there is some question as to whether or not they will be needed, or the quantity or unit value was so variable that it could not be estimated within (+or-) 25%.

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ITEM	DESCRIPTION	UNITS	TOTAL QTY.	UNIT PRICE	AMOUNT
(Off-site) SANITARY SEWER ITEMS:					
1	Connection to Existing Manhole	EA	1.00	\$1,725.00	\$1,725.00
2	10-inch PVC sanitary sewer main	LF	4,700.00	\$22.50	\$105,750.00
3	Sanitary sewer manholes,	EA	14.00	\$946.00	\$13,244.00
4	Asphalt Roadway cut & patch	SY	125.00	\$45.00	\$5,625.00
5	Class-6 Shoulder Mt'l Sta 0+83 to Sta. 24+75	Ton	605.00	\$8.80	\$5,324.00
6	Class-6 Driveway Mt'l	Ton	145.00	\$8.80	\$1,276.00
7	Remove & Replace Conc. Ditch	LF	10.00	\$40.00	\$400.00
8	Remove & Replace Conc. Ditch with 24"RCP	LF	15.00	\$40.00	\$600.00
9	Remove & Dispose Trees/Stumps	EA	5.00	\$400.00	\$2,000.00
10	Reset Water Meter	EA	1.00	\$130.00	\$130.00
11	Remove & Replace 6' Chain link fence	LF	20.00	\$4.00	\$80.00
12	Remove & Replace barbed wire fence	LF	75.00	\$3.00	\$225.00
13	Lawn/sprinkler/landscape Urruty property restor	LS	1.00	\$1,000.00	\$1,000.00
14	Remove & Reset Driveway Culvert	LF	25.00	\$20.00	\$500.00
15	Remove and Reset Street Signs	EA	2.00	\$15.00	\$30.00
Sub-total Off-Site Sanitary Sewer:					\$137,909.00

ITEM	DESCRIPTION	UNITS	TOTAL QTY.	UNIT PRICE	AMOUNT
SUPPLEMENTAL ITEMS: (if requested by engineer)					
1	Rock Excavation	CY	50.00	\$50.00	\$2,500.00
2	Select Backfill Sta. 0+00 to Sta. 24+75	Ton	4,150.00	\$8.00	\$33,200.00
		Sub-total	Supplemental	Items:	\$35,700.00
				TOTAL:	\$173,609.00
INCIDENTAL COSTS:					
1	Engineering			8 %	\$13,888.72
2	Surveying			2 %	\$3,472.18
3	Inspection			3 %	\$5,208.27
4	Legal fees	LS	1.00	\$6,000.00	\$6,000.00
5	"Record Drawings"			1 %	\$1,736.09
6	Bonds			2.5 %	\$4,340.23
7	ROW/Esmt. Acq.	LS	1	10,000.00	\$10,000.00
8	ROW Agent	LS	1	2,500.00	\$2,500.00
		Sub-total	Incidental	Items:	\$47,145.49
				GRAND TOTAL:	\$220,754.49

- a Items 1 thru 15 are based on firm bid numbers submitted by Lyle States Construction.
- b The Supplemental Items are items for which there is some question as to whether or not they will be needed, or the quantity or unit value was so variable that it could not be estimated within (+or-) 25%.